

**OFFICIAL GAZETTE of the  
UNITED STATES PATENT AND TRADEMARK OFFICE**  
April 21, 1987 Volume 1077 Number 3

**CONTENTS**

	Page
Patent and Trademark Office Notices	
Patent Cooperation Treaty (PCT) Information	1077 OG 18
Notice of Maintenance Fees Payable	1077 OG 18
Notice of Expiration of Patents Due to Failure to Pay Maintenance Fees	
Reissue Applications Filed	1077 OG 18
Requests for Reexaminations Filed	1077 OG 19
Notice for Registered Patent Attorneys or Agents	1077 OG 20
Petition for Writ of Quo Warranto	1077 OG 20
Agreed Order	1077 OG 20
Inclusion of Copyright or Mask Work Notices in Patents	1077 OG 21
Adverse Decisions in Interference	1077 OG 22
Animals Patentability	1077 OG 22
Patent Certificates of Correction	1077 OG 23
Disclaimer and Dedication	1077 OG 23
Reference Collections of U.S. Patents Available for Public Use in	
Patent Depository Libraries	1077 OG 26
Condition of Patent Applications	1077 OG 27
Reissue Patents Granted (32,402)	1241
Plant Patents Granted (5,947)	1243
Patents Granted	
General and Mechanical (4,658,441)	1247
Chemical (4,659,312)	1257
Electrical (4,659,867)	1711
Design Patents Granted (289,340)	1837
Index of Patents	PI 1
Indices of Reissue, Design and Plant Patents	PI 67
Classification of	
Patents (Including Reissues)	PI 71
Designs and Plants	PI 73
Geographical Index of Residence of Inventors	
Patents (Including Reissues)	PI 76
Designs and Plants	PI 78
Change of Address Form and Subscription Order Form	Back Page

The following are mailed under direction of the Superintendent of Documents, Government Printing Office, Washington, D.C., 20403, to whom all subscriptions should be made payable and all communications addressed:

THE OFFICIAL GAZETTE (PATENT SECTION), issued weekly.  
THE OFFICIAL GAZETTE (TRADEMARK SECTION), issued weekly.  
GENERAL INFORMATION concerning PATENTS.  
GENERAL INFORMATION concerning TRADEMARKS.

COPIES OF PATENTS are furnished by the Patent and Trademark Office at \$1.50 each; PLANT PATENTS in color, \$4.00 each; copies of TRADEMARKS at \$1.00 each. Address orders to the Commissioner of Patents and Trademarks, Washington, D.C., 20231.

Printing authorized by Section 11(a)(3) of Title 35, U.S. Code P.T.O.

BEST AVAILABLE COPY

1077 OG 24

OFFICIAL GAZETTE

April 21, 1987

Animals - Patentability

A decision by the Board of Patent Appeals and Interferences in *Ex parte Allan*, \_\_\_ USPQ \_\_\_ (Bd. App. & Int. April 3, 1987), held that claimed polyploid oysters are nonnaturally occurring manufactures or compositions of matter within the meaning of 35 U.S.C. 101. The Board relied upon the opinion of the Supreme Court in *Diamond v. Chakrabarty*, 447 U.S. 303, 208 USPQ 189 (1980) as it had done in *Ex parte Hibbard*, 227 USPQ 443 (Bd. App. & Int., 1985), as controlling authority that Congress intended statutory subject matter to "include anything under the sun that is made by man." The Patent and Trademark Office now considers nonnaturally occurring non-human multicellular living organisms, including animals, to be patentable subject matter within the scope of 35 U.S.C. 101.

The Board's decision does not affect the principle and practice that products found in nature will not be considered to be patentable subject matter under 35 U.S.C. 101 and/or 102. An article of manufacture or composition of matter occurring in nature will not be considered patentable unless given a new form, quality, properties or combination not present in the original article existing in nature in accordance with existing law. See e.g., *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, 333 U.S. 127, 78 USPQ 280 (1948); *American Fruit Growers v. Broderick*, 213 U.S. 1, 8 USPQ 131 (1931); *Ex parte Grayson*, 51 USPQ 413 (Bd. App. 1941).

A claim directed to or including within its scope a human being will not be considered to be patentable subject matter under 35 U.S.C. 101. The grant of a limited, but exclusive property right in a human being is prohibited by the Constitution. Accordingly, it is suggested that any claim directed to a non-plant multicellular organism which would include a human being within its scope include the limitation "non-human" to avoid this ground of rejection. The use of a negative limitation to define the metes and bounds of the claimed subject matter is a permissible form of expression. *In re Wakefield*, 422 F.2d 897, 184 USPQ 636 (CCPA 1970).

Accordingly, the Patent and Trademark Office is now examining claims directed to multicellular living organisms, including animals. To the extent that the claimed subject matter is directed to a non-human "nonnaturally occurring manufacture or composition of matter - a product of human ingenuity" (*Diamond v. Chakrabarty*), such claims will not be rejected under 35 U.S.C. 101 as being directed to nonstatutory subject matter.

Date

4-7-87

Donald J. Gulg  
Assistant Secretary and Commissioner  
of Patents and Trademarks

**This Page is Inserted by IFW Indexing and Scanning  
Operations and is not part of the Official Record**

**BEST AVAILABLE IMAGES**

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ **BLACK BORDERS**
- ☒ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☒ **FADED TEXT OR DRAWING**
- ☐ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☒ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☐ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☐ **OTHER:** \_\_\_\_\_

**IMAGES ARE BEST AVAILABLE COPY.**

**As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.**